

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-10 NSAE-00 FAA-00 L-03 IO-13
INRE-00 SSO-00 NSCE-00 SS-15 SP-02 /066 W
-----073628 221312Z /42
O 221245Z AUG 78
FM AMEMBASSY LONDON
TO SECSTATE WASHDC IMMEDIATE 9378
INFO AMEMBASSY OTTAWA IMMEDIATE

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E.O. 11652: N/A
TAGS: EAIR, US, UK
SUBJECT: CIVAIR: BRITISH THREATEN MOVE ON CANADIAN
USER CHARGES

REF: A) LONDON 3468; B) STATE 25870; C) OTTAWA 1024

1. SUMMARY: U.K. GOVERNMENT HAS REPLIED TO DIPLOMATIC
NOTE ON CANADIAN USER CHARGES BY PERSONAL LETTER TO
CIVAIR ATTACHE. LETTER REJECTS U.S. ARGUMENT THAT
BRITISH ENFORCEMENT WOULD BE CONTRARY TO BILATERAL
AND IGNORES GENERAL POLICY AND INTERNATIONAL LAW
ISSUES. IT STATES CIVIL AVIATION AUTHORITY WILL
SHORTLY INITIATE LEGAL ACTION AGAINST U.S. AIRLINES
INVOLVED. EMBASSY HAS BEEN INFORMALLY ASSURED NO
PUNITIVE ACTION, SUCH AS SEIZURE OF AIRCRAFT, WILL BE
TAKEN BEFORE FINAL COURT RULING. EMBASSY RECOMMENDS
IT BE ASKED TO REQUEST FORMAL REPLY TO ITS NOTE, AND
THAT SITUATION IN CANADA BE EXPLORED. END SUMMARY.

2. FCO HAS FINALLY REPLIED TO EMBASSY'S FEBRUARY NOTE
REGARDING CANADIAN USER CHARGES (TEXT REF B). REPLY
TAKES FORM OF LETTER FROM FOREIGN AND COMMONWEALTH
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OFFICE OFFICIAL (HALL) TO CIVAIR ATTACHE. TEXT
FOLLOWS:

"WOULD YOU PLEASE REFER TO YOUR NOTE NO 7 OF 6
FEBRUARY ABOUT CANADIAN AIR NAVIGATION SERVICE
CHARGES.

"YOU WILL RECALL THE VARIOUS ORAL EXCHANGES ABOUT

THIS SUBJECT IN THE COURSE OF MEETINGS HELD IN LONDON AND WASHINGTON EARLIER THIS YEAR TO CONCLUDE A NEW CHARTERS AGREEMENT, AND INDEED THIS WAS MENTIONED IN THE MEMORANDUM OF CONSULTATIONS SIGNED ON 17 MARCH. YOU MAY ALSO BE AWARE THAT PATRICK SHOVELTON ADVISED JIM ATWOOD ON 13 APRIL (IN WASHINGTON) THAT WE COULD NOT DELAY PURSUING THE MATTER IN THE BRITISH COURTS MUCH LONGER. WE HAD HOPED THAT THE THREE US CARRIERS INVOLVED (PAN AM, TWA AND SEABOARD) WOULD HAVE SOUGHT A REASONABLY QUICK RESOLUTION OF THE CASE IN THE CANADIAN COURTS. I REGRET TO SAY THAT THIS HAS NOT HAPPENED, AND I AM NOW WRITING TO ADVISE YOU THAT THE CIVIL AVIATION AUTHORITY HAVE AGREED WITH THE CANADIAN AUTHORITIES TO INITIATE ACTION IN THE BRITISH COURTS AGAINST THE THREE US CARRIERS STILL IN DEFAULT WITH REGARD TO THE CANADIAN AIR NAVIGATION SERVICE CHARGES FOR WHICH WE CONSIDER THEY ARE LIABLE UNDER UK AS WELL AS CANADIAN LAW. THE CIVIL AVIATION AUTHORITY PROPOSES TO INITIATE PROCEEDINGS AS SOON AS POSSIBLE.

"WE TAKE THE VIEW THAT THIS ACTION DOES NOT IN ANY WAY CONFLICT WITH THE TERMS OF THE AIR SERVICES AGREEMENT SINCE ARTICLE 10 OF THE AIR SERVICES AGREEMENT IS CONCERNED ONLY WITH CHARGES IMPOSED LIMITED OFFICIAL USE

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BY THE CHARGING AUTHORITIES IN THE UK ON US DESIGNATED AIRLINES. THE CHARGES IN QUESTION ARE HOWEVER AGREED TO BE IMPOSED BY THE CHARGING AUTHORITIES OF CANADA, AND THE FACT THAT UK AUTHORITIES COLLECT THE CHARGES AS AGENT FOR CANADA AND WITH THE AGREEMENT OF THE GOVERNMENT OF CANADA DOES NOT ALTER THIS."

3. IN ORAL DISCUSSION OF MATTER, HALL SAID THAT IF U.S. INSISTED, GIST OF HIS LETTER COULD BE PUT INTO A DIPLOMATIC NOTE. HE WAS CONFIDENT THAT THE SUBSTANCE WOULD NOT CHANGE; IT HAD BEEN APPROVED BY "OUR LAW LORDS" AND ON POLICY GROUNDS "AT A VERY HIGH LEVEL" (ABOUT WHICH HE WAS RELUCTANT TO BE MORE PRECISE). HE ALSO STATED THAT THE BRITISH ACTION WAS BEING TAKEN AT THE REQUEST OF THE CANADIAN AUTHORITIES, WHO EXPECT TO WIN THE COURT CASE IN CANADA WHEN IT BECOMES ACTIVE AGAIN THIS FALL.

4. ACCORDING TO HALL, TENTATIVE SCHEDULE OF EVENTS IS AS FOLLOWS:

O/A AUGUST 28 - CAA WRITES TO THE AIRLINES' U.K.

SOLICITOR (FRESHFIELDS) GIVING THE
AIRLINES 21 DAYS TO PAY THE ACCRUED

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BILL.

O/A SEPT. 15 - U.K. AUTHORITIES OBTAIN A WRIT AGAINST
THE THREE U.S. AIRLINES INVOLVED. IF
THE AIRLINES TAKE LEGAL ACTION TO
RESIST, IT WILL BE SOME MONTHS BEFORE
THE CASE IS REVOLVED.

(IN RESPONSE TO QUESTION, HALL SAID HE DID NOT FORESEE
ANY ADMINISTRATIVE ACTION AGAINST THE AIRLINES, SUCH AS
AIRCRAFT SEIZURE, BEFORE A FINAL COURT RULING. MORE-
OVER, HE ANTICIPATED THAT THE FCO WOULD OPPOSE ANY SUCH
PROPOSAL.)

5. DEPARTMENT WILL HAVE NOTICED THAT LETTER ENTIRELY
IGNORES GENERAL INTERNATIONAL LAW ARGUMENT OF EMBASSY'S
NOTE, AN ARGUMENT WE UNDERSTOOD HAD HAD SOME IMPACT
AT FCO. FURTHERMORE, FAILURE TO REPLY BY NOTE SUGGESTS
SOME MISGIVINGS ON FCO'S PART. THE IMPLICATIONS OF THE
BRITISH ARGUMENT THAT ARTICLE 10 OF BERMUDA 2 DOES APPLY
ARE NOT EXPLORED.

6. RECOMMENDATIONS:
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A. THAT IN LIGHT PARA 5 CIVAIR ATTACHE REPLY TO
HALL AS FOLLOWS:

"DEAR GEORGE,

"AS YOU KNOW, I WAS DISAPPOINTED TO RECEIVE YOUR
LETTER OF AUGUST 17 REGARDING CANADIAN AIR NAVI-
GATION SERVICE CHARGES. I HAD HOPED THAT THIS
QUESTION COULD BE DEALT WITH BETWEEN OUR AIRLINES
AND THE CANADIAN AUTHORITIES, CERTAINLY UNTIL
THE LEGAL SITUATION IN CANADA HAD BEEN CLARIFIED.

"NOR DID I FIND YOUR LETTER PERSUASIVE. IT
COMPLETELY IGNORES THE GENERAL CONSIDERATIONS PUT
FORTH IN OUR NOTE, BOTH THE POLICY CONSIDERATIONS
OF PARAGRAPH 2 AND THE GENERAL INTERNATIONAL LAW
CONSIDERATIONS OF PARAGRAPH 3. YOUR REJECTION
OF THE APPLICABILITY OF ARTICLE 10 DOES NOT REFLECT
ANY ANALYSIS OF THE KINDS OF ACTIONS SUCH AN INTER-
PRETATION MIGHT ALLOW. SURELY THE U.K. GOVERNMENT
DOES NOT INTEND THAT THE U.S. IS FREE TO TAKE ANY
ACTION IT WISHES AGAINST BRITISH AIRLINES, PRO-
VIDED ONLY THAT THE ACTION IS NOT SPECIFICALLY
FORBIDDEN BY THE BILATERAL.

"IN THE CIRCUMSTANCES, I MUST REQUEST A FORMAL
NOTE IN REPLY TO OUR OWN, SO THERE CAN BE NO
QUESTION WHATSOEVER OF THE U.K. POSITION ON THESE
ISSUES. I WOULD HOPE THAT THE LEGAL ACTION
PLANNED BY THE CAA COULD BE HELD UP UNTIL
WE HAVE HAD A CHANCE TO CONSIDER YOUR NOTE.
"SINCERELY,"

B. THAT EMBASSY OTTAWA BE INSTRUCTED TO EXPLORE
THE SITUATION IN LIGHT OF AIR TRANSPORT ADMINISTRATOR
MCLEISH'S STATEMENT IN CANADIAN HOUSE OF COMMONS
(REF C) THAT NO ENFORCEMENT ACTION WOULD BE TAKEN
PENDING A DECISION IN THE CANADIAN COURTS.

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STREATOR

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Message Attributes

Automatic Decaptioning: X
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Draft Date: 22 aug 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
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